



April 28, 2000

Ms. Ellen M. House  
Cotton, Bledsoe, Tighe & Dawson  
500 W. Illinois, Suite 300  
Midland, Texas 79701-4337

OR2000-1672

Dear Ms. House:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134873.

The Midland Independent School District (the “district”) received a request for “all board evaluations of Joseph Baressi Jr., for the past three years . . . includ[ing] the evaluation sheets filled out individually by each board member.” You claim that the requested evaluations are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially we note that section 552.022 of the Government Code is relevant to whether a completed evaluation is subject to public disclosure. Section 552.022 provides in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). Thus, pursuant to section 552.022(a)(1), completed evaluations are subject to required disclosure under the Public Information Act unless other law expressly makes them confidential.

In this instance, you assert that all of the requested evaluations are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.<sup>1</sup> Section 21.355 provides that “[a]ny document evaluating the performance of a teacher or administrator is confidential.” This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 at 3 (1996). In that decision, this office also determined that the term “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and who is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. You inform us that the individual to whom the requested evaluations pertain is the school superintendent of the district. You have provided documentation of that individual’s certification as an administrator by the Texas Education Agency. Based on your representations, the background material that you provided, and our review of the requested evaluations, we conclude that they are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Accordingly, the district must withhold the requested information from public disclosure.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

---

<sup>1</sup>Section 552.101 excepts from disclosure information that is considered to be confidential by law, including a statute. As a general rule, statutory confidentiality under section 552.101 requires express language making certain information confidential or stating that information shall not be released to the public. *See* Open Records Decision No. 478 at 2 (1987).

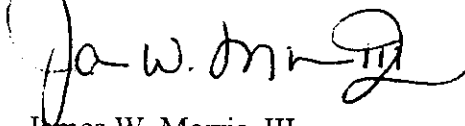
<sup>2</sup>We note that the submitted evaluations include a document that may not have been created in the course of the evaluation process. A document that exists elsewhere in the district’s records is not made confidential by its inclusion in an evaluation that is subject to section 21.355 of the Education Code. Thus, if the document that we have marked exists elsewhere, outside of the evaluations, it would be subject to disclosure under the Public Information Act. *See* Gov’t Code §§ 552.006, 552.022.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 134873

Encl. Submitted documents

cc: Mr. Jeff Stevens  
Midland Reporter Telegram  
201 E. Illinois  
Midland, Texas 79701  
(w/o enclosures)